

Order

Michigan Supreme Court
Lansing, Michigan

January 23, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-05

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of Rules 6.001,
6.610, 6.625, and 7.103 of
the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.001, 6.610, 6.625, and 7.103 of the Michigan Court Rules are adopted, effective May 1, 2007.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.106, 6.125, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Sentencing.

(1)-(2) [Unchanged.]

(3) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

- (a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and
- (b) the request for a lawyer must be made within 14 days after sentencing.

(G)-(H) [Unchanged.]

Rule 6.625 Appeal; Appointment of Appellate Counsel

- (A) An appeal from a misdemeanor case is governed by subchapter 7.100.
- (B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the court must enter an order appointing a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition. If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.101(B)(1) and MCR 7.103(B)(1) shall commence on the day of the appointment.

Rule 7.103 Application for Leave to Appeal

- (A) [Unchanged.]
- (B) Procedure.
 - (1) Except when another time is prescribed by statute or court rule, an application for leave to appeal must be filed within 21 days after the entry of the judgment or order appealed from.
 - (2)-(6) [Unchanged.]

(C) [Unchanged.]

Staff Comment: The amendment of Rule 6.001 makes subrules 6.005(B) and (C) applicable to misdemeanor cases. Subrules 6.005(B) and (C) set forth the factors to be used by the court in determining whether a criminal defendant is indigent and, if a defendant is able to pay part of the cost of a lawyer, allow the court to require the defendant to contribute to the cost of providing a lawyer and establish a plan for collecting the contribution.

The amendment of Rule 6.610 ensures that indigent defendants who are convicted in district court and sentenced to terms of incarceration, are aware of their right to counsel pursuant to *Halbert v Michigan*, 545 US 605 (2005), and *Shelton v Alabama*, 535 US 654 (2002). The amendment requires that after imposing a sentence of incarceration, even if suspended, the court must advise the defendant that if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal if the request for a lawyer is made within 14 days after sentencing.

The amendment of Rule 6.625 requires the court to enter an order appointing a lawyer to represent an indigent defendant on appeal from a conviction in district court if the court imposed a sentence of incarceration, even if suspended, and the defendant requests a lawyer within 14 days after sentencing. If there is a postjudgment motion pending, the court must rule on the request for counsel within 14 days after the disposition of the postjudgment motion. The amendment also provides that if a lawyer is appointed, the 21 days for taking an appeal pursuant to subrules 7.101(B)(1) and 7.103(B)(1) shall commence on the day of the appointment.

The amendment of Rule 7.103 is a technical amendment necessitated by the amendment of Rule 6.625.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 23, 2007

Corbin R. Davis
Clerk